

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-130808
	:	TRIAL NO. 13CRB-21934
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MAJOR MCNEIL, III,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This is an appeal from a conviction for possession of drug paraphernalia. Major McNeil challenges the trial court’s denial of his motion for an acquittal, and the weight and sufficiency of the evidence below. We find the conviction to be supported by the evidence, so we affirm.

On the evening of August 3, 2013, Officer Paul Smith and his partner were patrolling the parking lot of a Walgreen’s convenience store located on West Mitchell Avenue in Cincinnati. A Lexus SUV was parked in the lot, and Mr. McNeil was standing outside talking to the driver and front-seat passenger. As soon as Mr. McNeil saw the police cruiser, he jumped into the back seat of the vehicle. The officers approached to ask the driver some questions. While speaking with the driver, the officers noticed Mr. McNeil “moving around a lot” in the back seat. Officer Smith testified that Mr. McNeil was leaning to the left and moving his hand to his right, as if he were trying to conceal something underneath himself or to his

side. The officers ordered Mr. McNeil to keep his hands visible. Upon discovering that the driver had multiple warrants, the officers placed her under arrest and found syringes and shoelaces inside her purse. As Mr. McNeil exited the vehicle, the officers saw a glass crack pipe wrapped in toilet paper lying in the center of the back bench seat, within Mr. McNeil's reach. Mr. McNeil denied that the pipe was his, and told the officers: "I was taking them to buy, but I'm not selling." Mr. McNeil testified in his defense, stating that he does not smoke crack and that he had lied about taking the occupants to buy drugs because he was trying to be helpful to the police.

In his first and second assignments of error, Mr. McNeil contends that his conviction was based on insufficient evidence and that the trial court erred by denying his Crim.R. 29 motion for an acquittal. The standard of review for both claims is identical, so we consider these arguments together. "[P]ossession' means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K). A defendant has constructive possession of an object where he exercises "dominion and control" over it, thereby indicating that he is "conscious of the presence of the object." *State v. Mitchell*, 190 Ohio App.3d 676, 2010-Ohio-5430, 943 N.E.2d 1072, ¶ 5, citing *State v. Hankerson*, 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982).

The defendant in *Mitchell* was convicted of possession of marijuana found within his reach in the back seat of a car. We reversed his conviction because "[t]here was no evidence connecting [the defendant] to the marijuana other than his proximity to it[.]" *Mitchell* at ¶ 6. But in reaching that conclusion, we noted that because the car had tinted windows, the officers had not "observed any furtive movement that might have indicated that [the defendant] had knowledge of the marijuana's existence." *Id.* Here, however, Officer Smith testified that he saw Mr. McNeil making furtive movements and that he appeared to be attempting to conceal

something. Under these circumstances, the trial court could have concluded that Mr. Thomas exercised “dominion and control” over the crack pipe, such that he was “conscious of [its] presence[.]” Our review of the record reveals that the trial court could have found the essential elements proven beyond a reasonable doubt. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. We overrule the first and second assignments of error.

In regard to the manifest-weight argument, our review of the entire record fails to persuade us that the trial court clearly lost its way and created such a manifest miscarriage of justice that we must reverse Mr. McNeil’s conviction and order a new trial. *See State v. Thompkins*, 78 Ohio St.3d 380, 386-87, 678 N.E.2d 541 (1997). It was for the trial court to assess the credibility of the witnesses, and the court stated that it did not find Mr. McNeil to be credible. The third assignment of error is overruled, and we affirm the trial court’s judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., HENDON and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on June 27, 2014

per order of the court _____.
Presiding Judge